IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5493 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RABARI BALDEVBHAI BHALABHAI

Versus

STATE OF GUJARAT

Appearance:

MR MB GANDHI for Petitioner

MR PREMAL JOSHI, AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 27/11/2000

ORAL JUDGEMENT

1. Notice of this petition has been served on respondent but, till date no counter affidavit has been filed. After hearing Shri MB Gandhi for the petitioner and Shri Premal Joshi for the respondent, this petition

can be finally disposed of at this stage.

2. The brief facts giving rise to this petition are that the petitioner was allotted Survey No.1724 of new tenure land admeasuring 2924 sq.meters. This plot was having a big pit admeasuring 8' to 10' in depth. It could not be used for agricultural purposes. On 18-2-1997, the petitioner applied for converting the land from agricultural to non-agricultural purpose, as well as, to convert the same from new tenure to old tenure vide Annexure-'A'. On this application, the Collector initiated proceedings and gave a notice on 2-7-1998 indicating that the land remained unused from 1981-82 to 1994-95. Hence, there was breach of condition and permission prayed for was refused. As a consequence of this order dated 2-7-1998, the Prant Officer initiated proceedings and issued show-cause notice on 21-7-1998 as to why the land should not be taken over by the Government, as it has remained unused and also there was breach of condition vide Annexure-'C'. On 3-8-1998, the petitioner appeared before the Deputy Collector and gave his detailed explanation, why the land could not be used for agricultural purposes. Vide Order dated 7-9-1998 (Annexure-'E'), the Deputy Collector considered the explanation of the petitioner and directed that, within a period of six months the land should be put to non-agricultural use after getting proper permission from the Authority or to put it to agricultural use; failing which, the present order would be cancelled. After the said order, an application was moved by the petitioner for converting the land from new tenure to old tenure and to have non-agricultural use of the said land. This application Annexure-'F' was moved on 23-9-1998. The Collector allowed this application on 15-6-1999. However, the premium was assessed by the Collector at Rs.6,16,140=00 to be deposited within 21 days vide Annexure-'G' dated 15-6-1999. A review application was thereafter filed by the petitioner before the Collector that the premium inflicted is very high. The said review application is pending and has not been decided so far. Annexure-'I' is the copy of the review application. In the review application, the petitioner pointed out that, by order dated 5-6-1999, the Collector, Ahmedabad fixed the premium at Rs.4,53,250=00 with respect to the land of M/s. Parul PVC Manufacturing Pvt. Limited viz. Plot on Survey No.1634 and 1635 admeasuring 6475 sq.meters. Since the land of the petitioner is much less than half of the land of M/s. Parul PVC Manufacturing Pvt. Limited, assessment of premium for the petitioner at Rs.6,16,140=00, according to the petitioner was unsustainable. In the mean time, the petitioner moved an

application before the Deputy Collector for extension of time, on the ground that review application was pending. Inspite of this information, the Deputy Collector initiated proceedings and called upon the petitioner to remain present; and, ultimately on 9-5-2000, order was passed refusing extension of time and further order was passed that the land be taken over by the Government vide Annexure-'L'. It is this order, which is under challenge in this petition.

3. There is no doubt that review application is pending before the Collector. Learned AGP has argued that, since no stay order was granted by the Collector in review proceedings, the Deputy Collector was justified in initiating proceedings indicated above. Shri MB Gandhi, however, points out that no request was made in the review application for staying the earlier order of the Collector. However, on the facts and circumstances of the case, since review application is pending and the petitioner is challenging that the premium fixed against him is exorbitant, it is just and expedient that till review application is decided by the Collector, further proceedings for taking over possession of the land from petitioner be not taken.

4. In view of these facts, the petition is allowed. The Collector, Ahmedabad is directed to decide the review application of the petitioner within a period of four months from the date of production of certified copy of this order. During this period, further proceedings in compliance of the Deputy Collector's order shall remain stayed till the review petition is decided by the Collector.

November 27, 2000. [D.C. Srivastava, J.]

/sakkaf